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DIGEST OF WATER POLLUTION CONTROL LEGISLATION ... KENTUCKY

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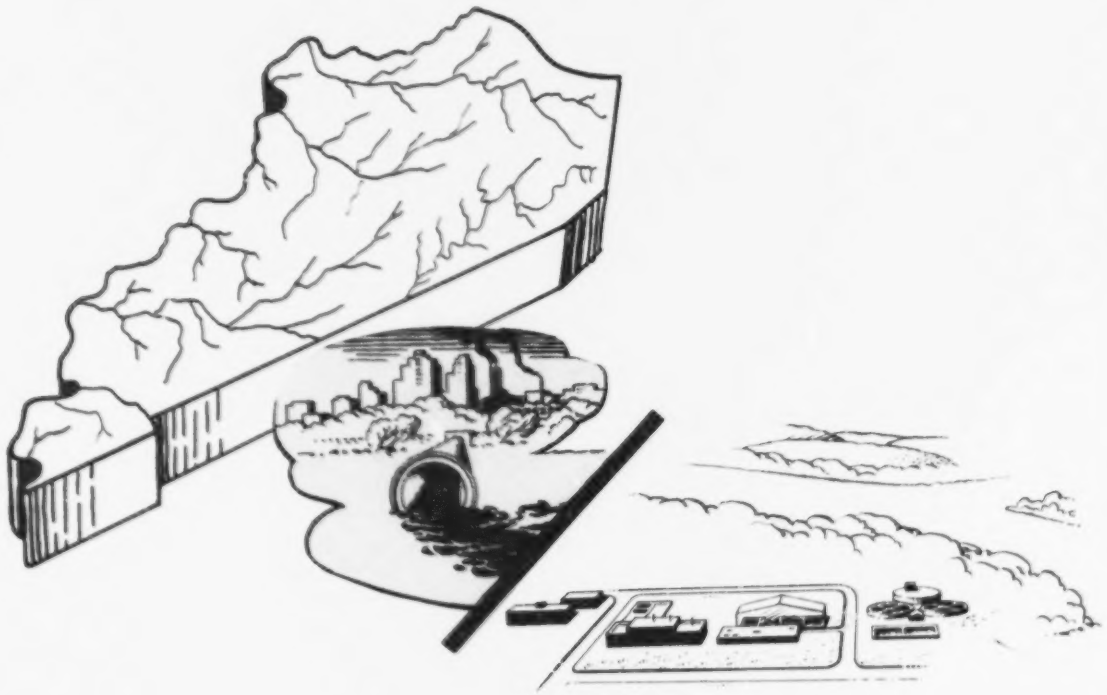

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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF KENTUCKY WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The Water Pollution Control Commission is charged with the responsibility for developing a comprehensive program for the prevention, control and abatement of water pollution throughout the Commonwealth (Sec. 220.610(2).[1]

The Commission is designated by statute as the Water Pollution agency for all purposes of the Water Pollution Control Act, Public Law 845, 80th Congress. It is authorized to take all action necessary to secure the benefits of the Federal Act. It is empowered to cooperate with the Surgeon General of the U. S. Public Health Service and other agencies of the Federal Government, other States, interstate agencies and other interested parties in all matters relating to water pollution. On behalf of the Commonwealth, it is authorized to apply for and receive funds made available to the Commission under the Federal Act by the Federal Government. It is authorized to approve projects for which application for loans or grants under the Federal Act is made by any municipality or State or interstate agency. It is empowered to participate in proceedings under the Federal Act to recommend measures for abatement of water pollution originating in the Commonwealth; give consent on behalf of the Commonwealth to requests by the Federal Security Administrator [Secretary of Health, Education, and Welfare] to the Attorney General of the United States for the bringing of suit for abatement of such pollution; and to

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1/ Citations in this digest refer to the Kentucky Revised Statutes, 1955, unless otherwise indicated.

consent to the joinder as a defendant in such suit of any person who is alleged to be discharging matter contributing to the pollution, abatement of which is sought in such suit (Sec. 220.620).

The State Department of Health administers and enforces the rules and regulations adopted by the State Board of Health relating, among other things, to the purification of water, the proper construction and operation of public water purification plants and distribution systems and sewage treatment plants, including the issuance of permits to and the supervision of operators thereof; the review, approval or disapproval of plans for construction or modification of water purification and distribution systems, sewage treatment plants and such other systems, plants, etc., as are designated by the Board (Sec. 211.180).

II. ADMINISTRATIVE ORGANIZATION

Water Pollution Control Commission

1. Composition and organization

The Commission is contained within the Department of Health. It is composed of the Commissioner of Health, the Commissioner of Conservation, the Attorney General, the Director of the Division of Game and Fish, and two persons appointed by the Governor for four-year terms, one of whom represents industrial management and the other municipalities. Each of the ex-officio members may designate a deputy to represent him on the Commission. At its first regular meeting in each calendar year the Commission elects one of its members as Chairman and another as Vice Chairman. The Commissioner of Health is the Secretary of the Commission, and he may employ an

Executive Director and other necessary personnel. Between meetings he carries out the duties delegated to him by the Commission, and he in turn may delegate such functions to the Executive Director. The Commission holds regular meetings at least once in every two months, and special meetings may be called by the Chairman or by two members by serving a written notice five days in advance of the date of such meeting on each member. Three members constitute a quorum (Sec. 220.600).

2. Powers and duties

a) Development of comprehensive program

The Commission is authorized to develop a comprehensive program for the prevention, control and abatement of water pollution throughout the Commonwealth. It is further authorized to establish or modify, after public hearing, water quality standards for the waters of the Commonwealth according to their uses (Sec. 220.610(2), (5)).

b) Issuance of permits and review of plans and specifications

The Commission is authorized to examine and pass upon all plans and specifications for, and to inspect the construction of, new disposal systems and treatment works, or modifications of disposal systems or treatment works, and modifications of factories or business enterprises, the operation of which would cause an increase in the pollutional load of any waters of the Commonwealth (Sec. 220.610(9)). The Commission is further authorized to issue, revoke, modify or deny permits for the discharge of any sewage, industrial or other wastes,

into any waters of the Commonwealth, and for the installation and operation of disposal and treatment systems (Sec. 220.610(10)).

c) Enforcement

The Commission is authorized to issue, after hearing, orders requiring discharge abatement or the adoption of remedial measures, including the construction of new disposal systems or treatment works or the modification of existing systems and works, as the Commission may deem necessary (Sec. 220.610(8)). The Commission is also authorized to institute court proceedings to compel compliance with the provisions of the Act or its orders (Sec. 220.610(12)).

Before the adoption of any rules or regulations of general applicability pertaining to the prevention or abatement of water pollution, including the establishment of standards of water quality, or before the issuance of any order prohibiting the performance of any act contrary to any rules, regulations, permits or orders, the Commission must hold public hearing thereon (Sec. 220.640(1)).

Anyone aggrieved by any order or determination of the Commission may file a verified petition with it, alleging the grounds therefor, and requesting a hearing. At such hearing the petitioner may appear, present evidence, and must be given full opportunity to be heard. Such hearing may be conducted by the Commission at a regular or special meeting or by any member or members designated by it. Any member of the Commission may, at such hearing, administer oaths, examine witnesses and issue in the name of the Commission notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to such hearing.

In the event of refusal by anyone to obey a notice of hearing or a subpoena, the Circuit Court of the county in which the hearing is held can issue an order requiring such person to appear and testify. Upon failure to obey, the Court may punish for contempt. All orders or determinations of the Commission are subject to review by a court of competent jurisdiction (Sec. 220.640(2),(3),(4),(5),(6)).

Anyone who violates any of the provisions of the Act or who fails to perform any duties imposed by the Act or who violates any orders or determinations of the Commission is liable to a civil penalty; each day the violation continues is a separate offense; and in addition the violator may be enjoined. The Attorney General is authorized to bring the action for civil penalties and for injunction (Sec. 220.990(1),(2)). Anyone who wilfully violates the provisions of the Act or any order or determination of the Commission which have become final, is guilty of a misdemeanor, subject to fine and imprisonment, or both (Sec. 220.990(3)).

It is unlawful for anyone to discharge into any waters of the Commonwealth any sewage, industrial wastes or other wastes that will contribute to the pollution of such waters in contravention of the standards of water quality adopted by the Commission or of its rules, regulations or orders (Sec. 220.630(1)). No new outlet through which sewage, industrial wastes, or other wastes are or may be discharged into the waters of the Commonwealth can be made or constructed by anyone after June 15, 1950, without first obtaining a permit issued by the Commission pursuant to its rules and regulations (Sec. 220.630(2)).

It is unlawful for anyone to construct, install, or modify a disposal system, or to operate any such system, without first obtaining from the Commission approval of the plans and specifications therefor and a written permit for its construction and operation (Sec. 220.630(3)).

No modification to any establishment located within the Commonwealth, the operation of which might cause a substantial increase in the discharge of wastes into the waters of the Commonwealth may be constructed without first obtaining from the Commission approval of the plans and specifications therefor and a written permit for its construction and operation (Sec. 220.630(4)).

It is unlawful for any person who, on June 15, 1950, was discharging into the waters of the Commonwealth any sewage, industrial wastes or other wastes, to continue such discharge after the expiration of 12 months after June 15, 1950, without first obtaining a permit therefor from the Commission pursuant to its rules and regulations (Sec. 220.630(5)).

d) Conduct of studies, investigations, and research

The Commission is authorized to encourage and conduct studies, investigations, research, experiments and demonstrations and to collect and disseminate information relating to water pollution control (Sec. 220.610(4)).

e) Cooperation with other public and private agencies

The Commission is empowered to advise, consult and cooperate with other agencies of the Commonwealth, other States and the Federal Government, and with affected groups and industries, in the formation

and carrying out of a comprehensive program for the prevention and abatement of water pollution; and to accept and administer loans and grants from other sources for carrying out any of its functions (Sec. 220.610(3)).

f) Administrative powers

The Commission is authorized to hold hearings, issue permits, orders, determinations and subpoenas, administer oaths, require the attendance of witnesses and the production of evidence, and adopt rules and regulations of procedure (Secs. 220.610, 220.640). The Commission may enter at any reasonable time, any public or private property for the purpose of inspecting conditions relating to possible pollution of the waters of the Commonwealth, which inspection will not involve confidential information relating to secret processes or to the economics of operation (Sec. 220.610(13)).

3. Preservation of existing rights and remedies

The Act does not repeal any of the laws of the Commonwealth relating to the pollution of the waters thereof or any conservation laws, but is ancillary and supplementary thereto, except to the extent that they may be in direct conflict (Sec. 220.650).

4. Statement of policy; severability clause

It is the policy of the Commonwealth to conserve the waters of the Commonwealth for public water supplies, the propagation of fish and aquatic life, fowl, animal wildlife and arborous growth, and agricultural, industrial, recreational and other legitimate uses; to provide a comprehensive program in the public interest for the prevention and abatement of pollution; to provide effective means for the

execution and enforcement of such program; and to provide for cooperation with agencies of other States or of the Federal Government in carrying out these objectives (Sec. 220.590(1)). It is also the State's policy to safeguard from pollution its uncontaminated waters; to prevent the creation of any new pollution of the waters of the Commonwealth; and to abate any existing pollution (Sec. 220.590(2)).

The Act contains a severability clause (Laws of Kentucky, 1950, Ch. 69, sec. 11).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful for anyone to place in any public waters any substance that might injure, interfere with or cause the waters to be unfit for the support of aquatic life, or to wilfully place in the public waters any substance which has a poisonous or intoxicating effect upon aquatic life (Sec. 150.460).

It is unlawful for anyone to place in any stream, dam, pool or pond any substance that renders the water unfit for use or produces a stench. Violation is punishable by a fine and imprisonment (Sec. 438.060(1)).

It is unlawful for anyone to place the carcass of any beast in any watercourse or within 25 yards of a watercourse, or cast it into any spring or pond. Violation is punishable by fine (Sec. 438.060(2)).

The carcass of a diseased domestic animal must be buried in a place which is not subject to overflow of ponds or streams and which is not nearer than 100 feet from any watercourse, well or spring (Sec. 257.160).

No one having in his possession a domestic animal infected with a communicable disease must knowingly permit such animal to go in any field through which a stream flows (Sec. 257.040).

IV. INTERSTATE COMPACTS

Kentucky is a party to the Ohio River Valley Water Sanitation Compact, relating to the control and abatement of pollution of the rivers and streams in the Ohio River Basin (Sec. 220.550).